

#20

PTO/SB/64 (09-04)  
Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
30899/40642

First named inventor: Robert Lamb

Application No: 09/670,346

Art Unit: 1615

Filed: September 27, 2000

Examiner: G. Kishore

Title: VITAMIN E PHOSPHATE/PHOSPHATIDYCHOLINE LIPOSOMES TO PROTECT FROM  
OR AMELIORATE CELL DAMAGE

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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**OFFICE OF PETITIONS**

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity – fee \$ 685.00 (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.

☐ Other than small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
the form of \_\_\_\_\_ (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_ .  
☐ is enclosed herewith.

B. The issue fee of and publication fee (if required) \$ 685.00 .

- ☐ has been paid previously on \_\_\_\_\_ .  
☒ is enclosed herewith.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. This statement is supported by a declaration from Robert Lamb (inventor) and a declaration from Anne Hovis (a representative of the inventor's licensee).



Signature

November 23, 2004

Date

David A. Gass

Typed or printed name

38,153

Registration Number, if applicable

MARSHALL, GERSTEIN & BORUN LLP  
233 S. Wacker Drive, Suite 6300  
Sears Tower  
Chicago, Illinois 60606-6357

Address

(312) 474-6300

Telephone Number

Enclosures:

- ☒ Fee Payment
- ☒ Reply (Issue Fee and copy of Issue Fee Transmittal)
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unintentional delay (Lamb and Hovis declarations)
- ☒ Other: Power of Attorney and Change of Correspondence Address

Page 2 of 2

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No.: EV 341012783 US, in an enveloped addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date:

Dated: November 23, 2004

Signature:  (Richard Zimmerman)

NOV 23 2004

11/03/2004

7034307584

FAX NO. 7034288406

P.02

NOV 23 2004

## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE  
Commissioner for Patents  
Washington, D.C. 20231  
Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance notice and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

Current Correspondence Address (Please specify name of entity if different from that of the inventor)

AGENT FOR KINER PLOTEN & KAIN  
1030 CONNECTICUT AVENUE, N.W.  
SUITE 400  
WASHINGTON, DC 20004

Note: A Certificate of Mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission  
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Date)  
(Signature)  
(Title)

Robert Lamb, PH.D.  
13610 Edmonthorpe Road  
Midlothian, VA 23113

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OFFICE OF PETITIONS

APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/670,344

09/27/2000

Robert Lamb

P021941-00001

4446

TITLE OF INVENTION: VITAMIN B PHOSPHATE/PHOSPHATIDYLCHOLINE LIPOSOMES TO PROTECT FROM OR AMELIORATE CELL DAMAGE

APPL. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional

YES

\$850

\$0

\$850

04/03/2003

EXAMINER	ART UNIT	CLASS-JUDCLASS
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KISHORE, DOLLAMUDI'S

1815

224.430000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.333)

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" indication form PTO/SB/122; Rev 03-03 or more recent) attached. Use of a Computer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1  
2  
3

## 3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THIS PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent)

☐ Individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

4b. Payment of Fee(s):

☒ Issue Fee☐ Publication Fee☐ Advance Order - # of Copies☒ A check in the amount of the fee(s) is enclosed.☐ Payment by credit card. Form PTO-2038 is attached.☒ The Commissioner is hereby authorized to charge the required fee(s), or credit any overpayment, to Deposit Account Number (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

11/03/04

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the record of the United States Patent and Trademark Office.

The collection of information is required by 37 CFR 1.311. The information is required to obtain or make a benefit by the public which is in file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Times will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing the burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Privacy Act of 1974, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)

PTOL-85 (REV. 04-02) Approved for use through 01/31/2004. OMB 0631-0053

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

11/30/2004 TTRAN2 00000003 09670346

01 FC:2501

685.00 OP



IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

Revive Application of:

**Robert Lamb**

Application No.: 09/670,346

For: VITAMIN E PHOSPHATE/  
PHOSPHATIDYLCHOLINE  
LIPOSOMES TO PROTECT  
FROM OR AMELIORATE  
CELL DAMAGE

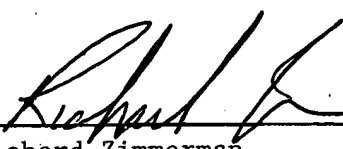
Filed: September 27, 2000

Group Art Unit: 1615

Examiner: G. Kishore

) I hereby certify that this correspondence is  
) being deposited with the US Postal Service as  
) Express Mail, Airbill No. EV341012783US,  
) in an envelope addressed to: Commissioner  
) for Patents, P.O. Box 1450, Alexandria, VA  
) 22313-1450, on this date:

) November 23, 2004

)   
) Richard Zimmerman

**DECLARATION OF ANNE P. HOVIS**

Dear Sir:

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OFFICE OF PETITIONS

I, Anne P. Hovis, declare the following upon information and belief:

1. I am providing this declaration to provide information to the Patent and Trademark Office in support of a petition to revive U.S. Patent Application Serial No. 09/670,346 (hereinafter "the '346 application") identified above.

2. On March 3, 2000, a subsidiary of Phlo Corporation, a Delaware corporation, licensed certain technology, including that covered by the '346 application, directly from inventor Robert G. Lamb, Ph.D. I am the Executive Vice President and General Counsel of Phlo Corporation ("Phlo").

3. In mid-2000, Phlo retained the law firm of Arent Fox Kintner Plotkin & Kahn (hereinafter "Arent Fox") to prosecute the '346 application. At that time, Phlo had an existing relationship with Arent Fox with respect to other (unrelated) legal matters. Pursuant to the

arrangement between Phlo and Dr. Lamb, the Arent Fox attorneys were instructed to communicate with both Dr. Lamb and Phlo concerning prosecution of the '346 application.

4. I am aware that the Patent Office issued an Office action in the '346 application dated May 21, 2002. After the Office action was issued, Phlo personnel (including me) worked with Arent Fox and with Dr. Lamb in the preparation of an amendment to the '346 application (and supporting papers) that Arent Fox filed with the Patent and Trademark Office on October 25, 2002.

5. Between October 25, 2002, and October 22, 2004, neither I nor Phlo received any further updates from Arent Fox that there had been further developments from the Patent and Trademark Office in the '346 application that occurred after October 25, 2002. Specifically, neither Phlo nor I received information from Arent Fox that the Patent Office had issued a Notice of Allowance or a Notice of Abandonment.

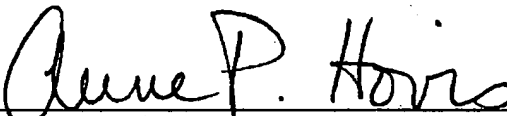
6. During the almost two year time period specified in the preceding paragraph, I contacted Arent Fox attorneys from time to time to inquire about the status of the '346 application, but was never told that the Patent Office had issued a subsequent communication such as a Notice of Allowance or Notice of Abandonment. In or about October 2003, I was told by an Arent Fox attorney that Arent Fox had received no communication from the PTO regarding the '346 application.

7. Phlo and I were first made aware of the issuance of a Notice of Allowance (dated 01/03/2003) and issuance of a Notice of Abandonment (dated 04/14/2003) in the '346 application by Robert Lamb on or about October 19, 2004. The '346 application was abandoned without my intent and without the intent of Phlo.

8. Promptly after learning of the status of the application, I began working with Dr. Lamb to retain alternative patent counsel to help us with the '346 application. After inquiries to multiple law firms, Advanced Bio-Delivery (a company within Phlo's corporate group) ("ABD") retained Marshall Gerstein & Borun LLP to assist with prosecution of the '346 application.

Specifically, ABD retained Marshall Gerstein & Borun LLP to determine Dr. Lamb's right to revive the '346 application from abandonment and assist with a petition to revive it. The process of researching, interviewing, and retaining another law firm, including the law firm's conflict check and negotiation of a retainer agreement, took a couple of weeks.

9. I further declare that all statements made herein on the knowledge of the undersigned are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent granted thereon.

  
Anne P. Hovis

Nov. 19, 2004

**IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE**



3. With my understanding and approval, Phlo Corporation (hereinafter, "Phlo") retained the law firm of Arent Fox Kintner Plotkin & Kahn (hereinafter "Arent Fox") to prosecute the '346 application on my behalf, and I granted a power of attorney to the attorneys and agents of Arent Fox to prosecute the '346 application. Pursuant to my arrangement with Phlo, the Arent Fox attorneys were instructed to communicate with both Anne Hovis (on behalf of Phlo) and me concerning Patent Office correspondence concerning the '346 application. (See Exhibit A, 2/16/01 letter, Arent Fox to Robert Lamb.)

4. I am aware that the the Patent Office issued an Office action in the '346 application dated May 21, 2002. After the Office action was issued, I worked with Arent Fox and with representatives of Phlo in the preparation of an amendment to the '346 application (and supporting papers) that Arent Fox filed with the Patent and Trademark Office on October 25, 2002.

5. Pursuant to the arrangement described above in paragraph 3, I relied upon Anne Hovis and Arent Fox to keep me updated concerning the '346 application. Between October 25, 2002, and October 22, 2004, I did not receive any further updates from Arent Fox that there had been further developments from the Patent and Trademark Office in the '346 application that occurred after October 25, 2002. Specifically, I did not receive information from Arent Fox that the Patent Office had issued a Notice of Allowance or a Notice of Abandonment.

6. During the almost two year time period specified in the preceding paragraph, I contacted Anne Hovis on a number of occasions to determine the status of the patent application. (At least five times from 3/19/03 to 10/20/04.) Attached as Exhibit B are printed copies of electronic mail communications between Anne Hovis and me concerning the status of the application. These emails memorialize the fact that I periodically asked Anne Hovis about the status of the '346 application. In response to my inquiries, Anne Hovis told me that Phlo had received no further substantive Patent and Trademark Office communications after the amendment that we filed in October, 2002 and that Arent Fox had informed her that

there had been no such communications received by Arent Fox. (Some information that is not relevant to my status inquiry has been deleted from the printed emails.)

7. In June of 2003, I also telephoned and e-mailed Arent Fox attorney Richard Berman to inquire about the status of the '346 application, but I received no response.

8. On October 12, 2004, I granted Glenna Hendricks, a patent attorney with whom I had previously worked, a power to inspect and make copies of the '346 application file. Due to the long delay in communications since October 2002, I wanted Attorney Hendricks to determine the status of the '346 application.

9. On October 19, 2004, Atty. Hendricks informed me of, and I first became aware of, the following:

a) a Notice of Allowance had been issued by the Patent and Trademark Office ("PTO") showing a mailing date of January 3, 2003, to Arent Fox, the notice of allowance requiring an issue fee to be paid on or before April 3, 2003, in the amount of \$650;

b) a Notice of Abandonment had been issued by the PTO showing a mailing date of May 14, 2003 to Arent Fox.

10. The application was abandoned without my knowledge and without my intention to abandon it. I did not become aware of the abandoned state of the application until notified by Attorney Hendricks on October 19, 2004. Had I been made aware of the Notice of Allowance in a timely manner, I would have paid the issue fee to get the patent issued.

11. When I learned that the application became abandoned, I promptly communicated the status to Anne Hovis at Phlo.

12. Since the time I learned of the unintentional abandonment, I have made every effort to have this petition to revive filed as quickly as possible, which filing required the location and retention of mutually acceptable counsel to assist in the filing.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 11/22/04

Signature: Robert Lamb  
Robert Lamb



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Application Number	09/870,346
Filing Date	September 27, 2000
First Named Inventor	Robert Lamb
Title	VITAMIN E PHOSPHATE/PHOSPHATIDYLCHOLINE LIPOSOMES TO PROTECT FROM OR AMELIORATE CELL DAMAGE
Art Unit	1615
Examiner Name	G. Kishore
Attorney Docket No.	30899/40642

Name	Registration Number	Name	Registration Number

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_ (David A. Gass)